theory that since no one was ever entitled to enforce the sale, there was never any conversion into personalty. See *Davenport* v. *Coltman*, 12 Sim. 610. The case would seem somewhat clearer if it were held that a conversion does not take place until the contingency upon which the sale is to be made has occurred. See *Paisley* v. *Holzshu*, 83 Md. 325. But see *Clarke* v. *Franklin*, 4 Kay & J. 257. Such a view would make applicable the rule, that there can be no conversion where all the purposes for which the conversion was directed have failed before the time when the conversion would otherwise occur. *Read* v. *Williams*, 125 N. Y. 560; *Smith* v. *Claxton*, 4 Madd. 484.

EQUITABLE CONVERSION — WHETHER SURPLUS PROCEEDS OF SALE OF LAND BY COURT DESCENDS AS REALTY OR PERSONALTY. — On A's death B became entitled to certain land. This land was subsequently sold by order of the court for the payment of the costs of settling the estate. After the sale B died intestate. *Held*, that the surplus resulting from the sale descends as personalty. *Burgess* v. *Booth*, [1908] 2 Ch. 648.

This decision reverses that of the lower court, criticized in 21 HARV. L. REV. 630.

ESTOPPEL — ESTOPPEL IN PAIS — FUTURE CONDUCT AS BASIS OF ESTOPPEL. — A sold land to B, taking a mortgage in part payment. B agreed to improve the land and to resell to A, who stipulated in the agreement that his mortgage should be subordinated to any mortgage which B might place on the premises to secure the payment of contemplated building loans. C, to whom B showed the agreement, made loans to B, and took a mortgage on the premises. Subsequently B released A from his subordination agreement. *Held*, that A, in seeking to foreclose his mortgage, is estopped to set up its priority. *Loudner* v. *Perlman*, 40 N. Y. L. J. 1439 (Dec., 1908).

In England a representation as to future conduct cannot form the basis of an estoppel. See *Jorden* v. *Money*, 5 H. L. C. 185, 214. In this country the tendency of the courts, expressed mainly in dicta, is to make an exception in cases where the representation relates to the intended abandonment of an existing right, if the representation is made to influence others and is in fact acted upon. *Insurance Co.* v. *Mowry*, 96 U. S. 544. In such cases equity should not aid the promisor in evading his undertaking. *Faxon* v. *Faxon*, 28 Mich. 159. But the decision here may be supported on another ground. In New York an agreement made for the benefit of creditors of the promisee gives them a vested right against the promisor when they show their consent by word or act. *Gifford* v. *Corrigan*, 117 N. Y. 257. In the case considered the legal remedy of C, the creditor, is distinctly inadequate, and equity, therefore, should grant him specific performance. *Hermann* v. *Hodges*, L. R. 16 Eq. 18. Then C's right to specific performance of A's agreement to subordinate his mortgage gives C an equitable defense in a foreclosure by A. *Randall* v. *White*, 84 Ind. 509.

EXECUTORS AND ADMINISTRATORS — ADMINISTRATION BONDS — SURETY'S LIABILITY. — B, the executrix of X, found among the assets of the estate shares of stock which in good faith she inventoried. She sold them and applied the money to the purposes of the estate. It subsequently appeared that the stock had been paid for by X with forged bonds. A, a judgment creditor of X, sued B and her surety on their bond. *Held*, that since the executrix appropriated the money as part of the estate, the surety is liable on his bond. *Wiseman* v. *Swain*, 114 S. W. 145 (Tex., Ct. App.).

The surety on an executor's bond obligates himself only for the principal's faithful administration of the assets. *Campbell* v. *Sacray*, 19 Ky. L. Rep. 1912. Assets are such things as the executor may properly appropriate to paying debts and legacies. *Given's Case*, 34 N. J. Eq. 191. By the weight of authority trust funds coming into the hands of an executor are not assets of the estate, even though treated as such by the executor. *People* v. *Petrie*, 191 Ill. 497.

Contra, *Matter of Hobson*, 61 Hun (N. Y.) 504. The law is the same where rents are collected by the executor. *McPike* v. *McPike*, 111 Mo. 216. In the case considered, since the shares were acquired by the testator's fraud, the proceeds of their sale should be held by the executrix on a constructive trust. *American Sugar Refining Co.* v. *Fancher*, 145 N. Y. 552. Clearly, then, the shares and their proceeds, which were incapable of being received by the executrix in her official capacity, cannot be regarded as assets. *Campbell* v. *Sacray*, *supra*. The decision, which would make the determination of what are assets depend on their treatment by the executor, is therefore difficult to support or reconcile with authority.

EXECUTORS AND ADMINISTRATORS — RIGHTS, POWERS, AND DUTIES — RIGHT OF SET-OFF AGAINST LEGATEES OR HEIRS. — The defendant was a beneficiary under the will of A and the residuary legatee under that of B. A debt due from B to A was barred by the Statute of Limitations. The trustees of A's estate took out a summons to determine the question of the defendant's liability to the estate. *Held*, that the defendant need not bring into account the amount of the debt as against his share of the testator's estate. *In re Bruce*, [1908] 2 Ch. 682 (Ct. App., Oct. 27, 1908).

For a discussion of this case in a lower court, see 22 HARV. L. REV. 143.

EXECUTORS AND ADMINISTRATORS — RIGHTS, POWERS, AND DUTIES — WAIVER OF STATUTE OF LIMITATIONS BY INTERESTED EXECUTOR. — A promissory note was barred by the Statute of Limitations before the maker's death. One of his executors, who was also one of the payee's heirs-at-law, made a payment as executor on account of the note. The payee's administrator brought a bill in equity to recover the amount of the note, to which the maker's other executor pleaded the statute. *Held*, that the note is barred. *Haskell* v. *Manson*, 39 Banker and Tradesman 264 (Mass. Sup. Jud. Ct., Jan. 7, 1909).

Many of those jurisdictions which allow an executor to waive the Statute of Limitations extend the rule so as to make a waiver by one co-executor binding upon the others. *Shreve* v. *Joyce*, 36 N. J. L. 44; *contra*, *Pitts* v. *Wooten's Executors*, 24 Ala. 474. Assuming that this extension is adopted, it is at least questionable whether it should be carried further so as to apply to claims in which the executor has an interest. An executor may waive the statute as to his own claims against the testator that were not barred at the time of the latter's death. *Preston* v. *Cutter*, 64 N. H. 461. As to those that were then barred, it has been said that the executor steps into the testator's place and so can revive claims held by him in his individual capacity. *Baker* v. *Bush*, 25 Ga. 594. But it is submitted that the executor steps into his testator's place solely for the purpose of protecting the estate. His duty being to use his discretion as to what barred claims are well founded and just, there is an obvious practical objection to allowing him this discretion in regard to a claim in which he is personally interested. *Batson* v. *Murrell*, 10 Humph. (Tenn.) 301; *Hoch's Appeal*, 21 Pa. St. 280.

GENERAL AVERAGE — NATURE, CAUSE, AND MANNER OF SACRIFICE — EFFECT OF INHERENT VICE OF CARGO UPON THE RIGHT TO CONTRIBUTION. — Y & Co. shipped coal upon G & Co.'s vessel. The cargo ignited by spontaneous combustion, whereupon water was poured into the hold, damaging the unburned coal. In respect to this damage Y & Co. claimed a general average contribution from G & Co. *Held*, that, in the absence of negligence on their part, Y & Co. are entitled to contribution. *Greenshields, Cowie & Co.* v. *Stephens & Sons*, [1908] A. C. 431.

A cargo of garbage tankage took fire by spontaneous combustion. The whole cargo of garbage tankage was destroyed in putting out the fire. The plaintiff insurance company had to indemnify the cargo owner and sued the vessel for a general average contribution. *Held*, that the plaintiff is entitled to contribution. *Atlantic Mutual Insurance Co.* v. *Schooner W. J. Quillan*, 40 N. Y. L. J. 2073 (U. S. Dist. Ct., S. D. N. Y., Jan. 1909).